

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA,)
v.)
JAKE DEMAKIS,)
DEFENDANT)
)
 CRIMINAL No. 2:08-CR-125-DBH

ORDER ON DEFENDANT'S MOTION TO REDUCE SENTENCE

This defendant has filed a motion requesting an appointment of a lawyer in connection with the retroactive and more lenient crack cocaine Guidelines. Because the new Guidelines do not benefit this defendant, the motion is **DENIED**.

At sentencing in 2009, the defendant's drug quantity was 464.8 grams of cocaine base. When coupled with attributable heroin, he had a drug equivalent of 9,371 kilograms of marijuana. That generated a base offense level of 34, reduced 2 levels under the then version of USSG § 2D1.1, comment 10(D)(i) because his case involved both crack and another type of drug. With a 3-level reduction for acceptance of responsibility, his total offense level was 29. Under the new Guidelines, his drug quantity equivalent is lowered to 1,660 kilograms of marijuana. That generates a base offense level of 32, but there is no longer the 2-level reduction under USSG § 2D1.1. After the 3-level reduction for

acceptance of responsibility, therefore, his total offense level is once again 29, just as it was in 2009.

Moreover, the defendant faced a mandatory minimum sentence of 120 months on Count 1 (more than 50 grams of crack cocaine), 21 U.S.C § 841(b)(1)(A), and a mandatory consecutive sentence of 60 months on Count 2 under 18 U.S.C. § 924(c). So his guideline sentence then and now was 180 months. I granted a government motion to depart in the amount of 40% to a total sentence of 102 months.

Unfortunately for the defendant, no change to the defendant's sentence can result from the new Guidelines because any departure must start at the same level.

The motion for appointment of counsel is **DENIED**.

So ORDERED.

DATED THIS 15TH DAY OF MAY, 2012

/S/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE